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In The
Supreme Court of the United States

ALISON E. CLAPP O'CALLAGHAN
and
DANIEL J. O'CALLAGHAN,

Petitioners,

v.

HOMAYOUN SHIRAZI, M.D.; SEAN M. DUNPHY; DAVID G. SACKS; GAIL L. PERLMAN; BULKLEY, RICHARDSON & GELINAS, LLP; PETER B. IVES, REVEREND; THE FIRST CHURCHES OF NORTHAMPTON; CORASH, ZURN & BELSKY, LLP; SUSAN C. SCHRODER; and MARY LYNN CARROLL, ESQ.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE QUESTION PRESENTED FOR REVIEW

The Petitioners' statement of issues is incorrect. The question presented by the petition is as follows: Whether the Courts below properly exercised their discretion in denying the Petitioners' Rule 60(b) motion to vacate a six-year-old judgment where: (1) there had been no significant change of law or circumstances; (2) the Petitioners were seeking federal review and nullification of a state probate court judgment; (3) the requested relief would have unfairly prejudiced the Respondents; and (4) the state courts, District Court, and First Circuit had repeatedly considered and rejected as meritless the same essential arguments years before?

STATEMENT REGARDING THE PARTIES

All parties to the proceeding are listed in the case caption.

STATEMENT PURSUANT TO RULE 29.6

No publicly held company owns 10% or more of the First Churches of Northampton.

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INTRODUCTION

The "*pro se*" Petitioners are New York City attorneys with 60 years combined legal experience. In 1999, unhappy with case-specific rulings in a Massachusetts Probate and Family Court ("Probate Court") guardianship proceeding that they had commenced, the Petitioners filed suit in Federal District Court against ten parties: multiple state judges, judicially appointed professionals, Probate Court employees, a local minister and church, and others associated with the state proceedings. The Petitioners' essential allegation was that the defendants/respondents ("Respondents") all were conspiring to subvert the pending guardianship proceedings and frustrate the Petitioners' efforts to have the Petitioner Alison O'Callaghan appointed co-guardian of a distant, elderly, wealthy relative. The Petitioners asked the District Court to issue an injunction and supervise the Massachusetts Probate and Family Court. The Respondents filed oppositions and motions to dismiss.

The District Court properly declined to enjoin the guardianship matter. A trial in the Probate Court followed. The Petitioners called only one witness: a court-appointed guardian *ad litem* who, in reliance on the findings of a court-appointed physician, her own observations, and other evidence had concluded that no guardianship was necessary. Her testimony was not supportive of the request for a guardianship. The Probate Court denied and dismissed the guardianship petition in June 1999. The Petitioners appealed.

Thereafter in the federal action, the District Court granted the Respondents' motions and dismissed the action in its entirety. Noting that the Petitioners' submissions

were "compendious, confused, and confusing," the District Court held that, under the *Rooker-Feldman* doctrine, it lacked subject matter jurisdiction, and that it would abstain in any event. The Petitioners appealed. Before the Respondents had even filed their brief, the First Circuit on May 3, 2000 issued an opinion summarily affirming. Since then, the Probate Court's dismissal of the guardianship petition has been affirmed by the Massachusetts Appeals Court, the subject of the guardianship proceeding has died, and her estate has been fully probated, distributed, and closed.

In 2005, six years after the District Court's dismissal, the Petitioners resurfaced and filed a motion pursuant to Fed. R. Civ. P. 60(b) seeking relief from the 1999 judgment. The ostensible basis of the motion was a new decision by this Court, but the Petitioners' essential argument was not new: the District Court's *Rooker-Feldman* analysis was wrong initially and *remained* wrong for the same reasons. The District Court denied the Petitioners' motion. The Petitioners appealed, and the First Circuit again affirmed. The lower orders and judgments unquestionably were correct. There is no need for review by this Court.

STATEMENT OF THE CASE[1]

I. THE UNDERLYING MASSACHUSETTS PROBATE PROCEEDINGS

1. In March 1998, the Petitioners filed a guardianship petition in the Hampshire County Division of the Massachusetts Probate and Family Court. The Petitioners requested that a guardianship be created for proposed ward Hortense Clapp Pollard ("Pollard"). The Petitioner Alison E. Clapp O'Callaghan claimed to be an heir of and second cousin to Pollard. The Petitioners requested that Alison O'Callaghan and Kenneth B. Bowen be appointed as Pollard's guardians, on the ground that Pollard suffered from mental illness. Pollard objected to the petition, alleging good health and full capacity.

2. At the time, Pollard was in her nineties and a wealthy woman with substantial holdings, including at least three parcels of real property. Pollard resided in Northampton, Massachusetts, where she was under the care of home health-care workers. The Petitioners are attorneys who have lived in New York City (approximately 161 miles from Northampton) for many years.

3. After the commencement of the Petitioners' guardianship proceedings, with the assent of the Petitioners and Pollard, the Probate Court appointed as guardian *ad litem* the Respondent Judge Gail Perlman, who was then a Northampton-based attorney with twenty years probate experience. The Probate Court ordered Perlman to conduct an investigation and to submit a report concerning the

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[1] The following statements of fact are based on the judicial filings and other materials that comprised the record before the District Court and the First Circuit.

pending guardianship petition. The Court also appointed the Respondent Dr. Homayoun Shirazi to examine Pollard as to her mental status and competency. Pursuant to the Probate Court's order, Perlman met with Pollard, O'Callaghan, and others with information bearing on the petition. For his part, Dr. Shirazi examined Pollard and found her competent.

4. On or about May 28, 1998, Perlman filed her report with the Probate Court. In the report, Perlman noted Dr. Shirazi's finding that Pollard was not mentally ill and did not require guardianship. Based on this finding, Perlman made a number of recommendations to the Probate Court as to steps to be taken to protect Pollard's interests short of creating a guardianship. Dr. Shirazi also submitted a report discussing his findings.

5. On September 28, 1998, Perlman was sworn in as a justice of the Massachusetts Probate and Family Court. Other than as a testifying witness in the guardianship trial, she had no further involvement with the guardianship proceeding.

6. The Probate Court trial on the guardianship petition took place on June 1, 1999. The Petitioners called only one witness – Judge Perlman – whose testimony was adverse to the Petitioners' position. They rested the same day. The Probate Court issued detailed findings of fact and conclusions of law, and ruled against the Petitioners. The Court dismissed the guardianship petition on June 25, 1999. The Petitioners appealed, the Appeals Court affirmed, and the Supreme Judicial Court denied further review. *See Guardianship of Pollard*, 54 Mass. App. Ct. 318, 322-324, *rev. denied*, 437 Mass. 1103 (2002).

II. THE FEDERAL ACTION

1. On April 29, 1999, about five weeks before the Probate Court trial, the Petitioners commenced the instant Federal action against virtually everyone who has had any connection with the Probate Court guardianship proceeding or underlying events, including three sitting judges and an assistant register of probate. The Petitioners sought injunctive and declaratory relief and, as against some defendants, damages.

2. The Petitioners vaguely alleged that, after she became a judge of the Probate and Family Court, Judge Perlman communicated with other judges on the Probate Court who were involved in the guardianship proceeding. The Petitioners implied that such communications concerned the guardianship proceedings, but offered no evidence in support of that suggestion and no evidence concerning the substance of any such communications.[2]

3. For relief, the Petitioners requested that Judge Perlman's May 28, 1998 Report and Recommendation be excised from the Probate Court record, and that Judge Perlman be disqualified. They sought a "declaration" that the "Judicial Defendants" violated the Petitioners' unspecified due process rights. The Petitioners also sought an injunction directing the course of the Probate Court proceeding and trial.

4. On May 27, 1999, the District Court held a hearing on the Petitioners' request for an injunction. During

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[2] The Petitioners had the opportunity to conduct Judge Perlman's deposition, but never did so. When they called Judge Perlman as a witness at trial, the Petitioners did not ask about these alleged communications. There was no evidence of improper communications.

the hearing, the Court expressed doubt as to the existence of federal jurisdiction, and the petitioner Daniel O'Callaghan *repeatedly conceded* that he also had doubts about the Court's jurisdiction. From the bench, the Court denied the injunction and ordered that motions to dismiss be filed. The Respondents all moved to dismiss.

5. On June 21, 1999, the Petitioners filed their Amended Complaint. The Amended Complaint added eighty-six new allegations and specifically criticized the Probate Court's conduct of the earlier (June 1) guardianship trial. The Respondents renewed their motions to dismiss.

6. The Petitioners also filed a variety of motions on procedural and collateral matters. In relation to these filings, on July 7, 1999 the District Court denied the Petitioners' motion under Rule 15 to amend their complaint as to Judge Perlman and Susan Schroder. On August 24, 1999 the Court denied the Petitioners' motion for leave to conduct a medical exam pursuant to Rule 35.

7. In a well-reasoned opinion dated December 22, 1999 (six months *after* the Probate Court's final decree), the District Court granted the motions to dismiss. Citing the *Rooker-Feldman* doctrine, the District Court found the action to be "nothing other than a collateral attack upon interlocutory orders and a final judgment in a state court guardianship proceeding." The Court also noted that, in any event, abstention was appropriate because the state proceedings were presumptively adequate and involved

probate issues of particular concern to Massachusetts. (App. 2a-3a)[3]

8. On December 29, 1999 the District Court denied as moot the Petitioners' motion for expedited relief. On January 13, 2000 the Court denied the Petitioners' motions for recusal and for discovery pending appeal, as both requests were made after the case was dismissed. On February 8, 2000, the Court denied the Petitioners' motions to reconsider, for the posting of a bond by the Respondents, and (again) for discovery pending appeal. On the same date the Court also deferred to the First Circuit the Petitioners' motion to disqualify counsel for Judge Perlman, and granted the Respondents' motion for an order requiring that the Petitioners post an appeal bond.

9. The Petitioners appealed. The First Circuit summarily affirmed before the Respondents had filed their brief. *O'Callaghan v. Shirazi*, 215 F.3d 1312 (1st Cir. 2000). The Court affirmed the District Court's orders as to appeal bonds and recusal of the District Judge. The Court ruled that the following orders/pending motions by the Petitioners were moot: (1) for discovery pending appeal; (2) for an injunction pending appeal; (3) for an expedited appeal; and (4) for retention of certain appendices. The Court also denied the Petitioners' motion to disqualify Judge Perlman's counsel. The Petitioners did not request a writ of certiorari. (App. 5a-8a)

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[3] Citations to the Appendix included in the Petition For Writ of Certiorari appear as: (App. [page]). Citations to the Petition appear as: (Pet. for Cert. at [page]). Citations to the Petitioners' 2006 First Circuit brief appear as: (Pet. First Cir. br. at [page]).

10. Pollard died on August 7, 2002. Her estate has been probated, distributed, and closed.

11. On October 26, 2005, following issuance by this Court of the decision in *Exxon Mobil Corp. v. Saudi Basic Ind. Corp.*, 544 U.S. 280 (2005), the Petitioners filed a motion for relief from judgment pursuant to Rule 60(b). The Respondents filed a detailed opposition with exhibits.

12. The District Court denied the motion on December 29, 2005, finding that the Petitioners had failed to show good cause to revive the matter. The Petitioners appealed. The First Circuit affirmed. (App. 11a-13a)

REASONS FOR DENYING A WRIT OF CERTIORARI

The Petitioners have failed to identify any reason – let alone a compelling reason – why review by this Court is in order. They do not allege the existence of a circuit split or a federal/state conflict, or that the First Circuit decision clashes with decisions of this Court. Nor do they allege that there is some open issue that should be resolved. Rather, the Petitioners have simply recycled the same "confused and confusing" arguments (App. 2a) that they have previously presented over and over to the Massachusetts state courts, the District Court, and the First Circuit. For the following reasons, these arguments merit no further consideration.

I. THE LOWER COURTS PROPERLY APPLIED RULE 60(b).

Rule 60(b) permits District Courts to vacate judgments in limited circumstances whenever necessary to accomplish justice. *Klapprott v. United States*, 335 U.S. 601, 614-615 (1949). The movant's burden is to show "extraordinary circumstances" justifying relief. *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (citing *Ackermann v. United States*, 340 U.S. 193, 199 (1950) and *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 864, 873 (1988)). Whether to grant relief pursuant to Rule 60(b) is committed to the sound discretion of the District Court. *Browder v. Director, Dept. of Correc. of Ill.*, 434 U.S. 257, 263 n.7 (1998); *Agostini v. Felton*, 521 U.S. 203, 238 (1997). An order denying such a motion will not be reversed in the absence of an abuse of discretion. *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923 (1st Cir. 1988). The denial of a rule 60(b) motion is appealable, but only the order of denial is before the Court, not the underlying judgment. Appellate review is "limited and deferential." *Gonzalez*, 545 U.S. at 535; *Browder*, 434 U.S. 257 at 263 n.7.

The District Court and First Circuit decisions fall squarely within these general principles. Both Courts properly focused only on the order of denial. (*E.g.*, App. 11a-13a) Further, in affirming the District Court's denial, the First Circuit acknowledged that the Petitioners were required to show extraordinary circumstances. (App. 11a) The Court also acknowledged that an abuse of discretion standard applied. (App. 11a-12a) The Court's analysis flowed from these core principles, and was fully justified on the following grounds.

A. The Motion Was Untimely.

Rule 60(b)(1)-(3), which the Petitioners relied on in part, requires that motions asserting mistakes, newly discovered evidence, or fraud must be brought within one year of the allegedly erroneous judgment. The Petitioners' 60(b) motion violated this requirement and was therefore properly denied.

The Petitioners argued below that the District Court's 1999 judgment was erroneous in 2005 *and was erroneous in 1999 when rendered.* Their argument was the same below in 2005 as in 1999: *Rooker-Feldman* does not apply. For example, on page 1 of their 2005 Rule 60(b) motion, the Petitioners asserted that "*Rooker-Feldman* does *not* bar – *and never has barred* – Federal jurisdiction." (emphasis added) In their supporting memorandum, the Petitioners repeated this argument:

> [A] recent . . . United States Supreme Court . . . case . . . confirms the *long-standing* validity of Plaintiffs' meritorious grounds for Federal jurisdiction.

(emphasis added).

> Here, a *Rooker-Feldman* bar does not exist – and has not *ever* existed.

(emphasis added). Their First Circuit brief was to the same effect (Pet. First Cir. br. at 2, 24-26.), as is their current petition. (Pet. for Cert. at 14.)

Thus, the position is that the 1999-2000 decisions have *always* been mistaken for the *same* reasons that the Petitioners expressed in 1999 and 2005 in the District Court and the First Circuit. Given this posture, the Petitioners had only one year from the date of the judgment to

seek relief under Rule 60(b)(1)-(3). They failed to do so, so their motion was late.

Rule 60(b) provides that motions for relief under Rules 60(b)(4)-(6) can be brought later than one year post-judgment, but must still be brought within a "reasonable time." Even if this more lenient provision is applicable, the 60(b) motion was still fatally late. Judgment dismissing the suit issued in December 1999. The First Circuit affirmed in May 2000. As noted above, the Petitioners have believed *since December 1999* that the District Court's judgment was erroneous. During those years, the state court guardianship proceedings have run their course. Pollard has died, her estate has been fully probated and closed. By any reasonable assessment, the Petitioners' motion was much too late.

This Court's decision in *Exxon Mobil Corp.*, 544 U.S. 280, does not alter this point, for several reasons. First, *Exxon* does not apply "retroactively" here. *See Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 752, 758 (1995) (new decisional rules do not apply to finally decided, closed cases).

Second, as the First Circuit correctly noted (App. 11a-12a), there is no "significant" change of law sufficient to justify 60(b) relief. The Petitioners concede that *Exxon* does *not* represent a change of law:

> [T]he Supreme Court . . . in *Exxon* . . . identified the always limited application of *Rooker-Feldman*. Respectfully, this identification is/remains exactly in the same manner [sic] and to the same effect as Appellants have presented to the district court and to this Court since 1999. case [sic] commencement.

* * * * *

> [A] *Rooker-Feldman* bar does not exist – and has not ever existed.

(Pet. for Cert. at 14; *see also* Pet. First Cir. br. at 2, 24-26) The Petitioners are bound by the admission that *Exxon* only clarifies prior law.

Third, in any event, not all purported changes in law merit relief under Rule 60(b). *E.g.*, *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388, 405 (1992). All things considered, there was no reason why *Exxon* warranted vacation of the judgment, so the Petitioner's motion cannot be said to have been brought within a "reasonable" time in relation to *Exxon*.

B. There Are No Extraordinary Circumstances.

The relevant circumstances here are garden-variety, and far from extraordinary. The Petitioners brought an action in the District Court and filed numerous submissions and exhibits. They were fully and fairly heard both at the time of their motion seeking a preliminary injunction and in opposition to the Appellees' motions to dismiss. After the District Court had ruled on their many petitions and requests, they prosecuted an appeal to the First Circuit, which issued a thoughtful opinion analyzing and disposing of their contentions. All of the Petitioners' issues and requests were fairly and thoroughly considered.

No special circumstances have arisen since then. The only development cited by the Petitioners is this Court's *Exxon* decision in 2005 – six years following the original adjudication of the case. And the Petitioners do not even contend that *Exxon* is some exceptional departure from prior precedent. Instead, they say only that it bolsters the

same argument that they made six years ago – that the *Rooker-Feldman* doctrine does not apply here. Thus, even on *the Petitioners'* view of *Exxon*, the decision is not an extraordinary development.

And there is no other basis for such relief. The underlying factual circumstances *have* changed, but only in ways that militate *against* Rule 60(b) relief and in favor of finality: The proposed ward Pollard has died. Her estate has been fully probated, distributed, and closed. The Petitioners' appeal from the underlying Probate Court decree has been completed and the Probate judgment affirmed. *Pollard*, 54 Mass. App. Ct. 318. Six years have passed. These developments are all reasons why the Rule 60(b) request was properly denied.

C. The Requested Relief Would Unfairly Prejudice The Respondents.

Rule 60(b) relief is available in *limited* circumstances when required to accomplish justice. In analyzing requests for such relief, the importance of finality must be considered. *Liljeberg*, 486 U.S. at 873 (Rehnquist, C. J., dissenting) ("[S]trict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved."). Justice and finality would be hollow concepts indeed if the Petitioners were granted the relief they seek here. The proposed ward Pollard is dead and her estate distributed and closed. In the six years since the District Court and this Court first decided the Petitioners' claims, many parties have relied on that judgment, including the ten Respondents, defense counsel, the Probate Court, the Massachusetts Appeals Court, and all parties interested in Pollard's estate. Justice and finality should protect the reliance interests of

all of these parties and institutions against the undue confusion and prejudice that continued proceedings would entail.

D. The Judgment Is Not Void.

Federal authority over state judicial proceedings is exceedingly limited. "Federal Courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension." *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (2006) (quoting *Smith v. Phillips*, 455 U.S. 209, 221 (1982)). In an effort to skirt this principle, the Petitioners argue that the District Court's judgment is void and may be disregarded. This argument is meritless.

The void judgment concept is well established:

> A void judgment is from its inception a legal nullity. . . . In the interests of finality the concept of void judgments is narrowly construed. A judgment is not void merely because it is or may be erroneous, or because the precedent upon which it is based is later altered or even overruled. A judgment is void, and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounts to a plain usurpation of power constituting a violation of due process.

United States v. Boch Oldsmobile, Inc., 909 F.2d 657, at 661-662 (1st Cir. 1990) (citing *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376 (1940)).

The First Circuit correctly concluded that the void judgment concept is inapplicable. (App. 12a-13a) To begin

with, the Petitioners do not allege that the District Court lacked jurisdiction. The thrust of their position is that the District Court's dismissal somehow deprived them of due process. That claim is frivolous. The Petitioners' guardianship petition has been carefully considered by the Massachusetts Probate Court (which issued comprehensive findings of fact and rulings of law) and the Massachusetts Appeals Court. Their requests for federal intervention have been considered by the District Court twice and by the First Circuit twice. The order denying Rule 60(b) relief was correct and grounded in well-settled rules. Even if it is assumed *arguendo* that there was an abuse of discretion (there was not) and that the 60(b) motion should have been granted, that means only that there has been legal error as to the denial, *not* that the underlying judgment was void.

II. THE PETITIONERS' CLAIMS ARE SUBJECT TO DISMISSAL AND ARE MERITLESS IN ANY EVENT.

A. The Claims Are Moot.

The Petitioners' claims are now *entirely moot*. Regarding the equitable claims, the state guardianship proceedings have been finally decided, and Pollard died over three years ago. The prospective equitable relief that the Petitioners sought in 1999 cannot be granted now because the proceedings that the Petitioners had hoped to influence have been complete for years.

Any theoretical damages claims are moot as well. First, no real damages claim has been pled here. This Court will search the prolix complaint, amended complaint, and supplemental complaint in vain for a well-pled

allegation in compliance with Fed. R. Civ. P. 8 that any of the Respondents caused harm for which damages are recoverable. *See generally Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 149, 152 (1984). *See also Newman v. Commonwealth of Massachusetts*, 115 F.R.D. 341, 344 (D. Mass. 1987) (dismissing "argumentative, prolix and verbose" complaint). The pleadings make only token requests for compensatory damages, and only as to some of the Appellees. (Implicit in this silence is recognition that the defendants are immune. *See infra* Section D.) Consonant with this view of the matter, in their Petition for Certiorari and First Circuit brief, the Petitioners have effectively *conceded* that their pleadings do *not* presently state a claim for damages. (Pet. for Cert. at 18-22; Pet. First Cir. br. at 42-44)[4]

Second, the thrust of the federal claims is that the guardianship proceedings in the Massachusetts courts were irregular due to various alleged actions and conflicts of the Respondents. The Petitioners had the right to assert such arguments in the Massachusetts courts and presumably raised all points there that they considered important. Those courts rejected the Petitioners' contentions and resolved all issues against the Petitioners. *Pollard*, 54 Mass. App. Ct. 318. Those proceedings and

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[4] What would a damages claim possibly look like here? Would it be that, but for the actions of some of the Appellees, the plaintiffs would have been Pollard's guardians and would have caused the transfer of her estate to themselves, that there would have been no effective objection to this, that the transfer would have been approved by the Probate Court, and that, therefore, the federal courts should now overlook the contrary Probate and Appeals Court decrees and award the plaintiffs the value of Pollard's estate? Mootness may be the *least* of the problems with this absurd theory.

decisions were presumptively correct and regular. *See Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 431 (1982); *Bettencourt v. Board of Reg. in Medicine*, 904 F.2d 772, 776 (1st Cir. 1990). In this context, any claims premised on the theory that the state proceedings somehow were compromised have been effectively mooted, and should not be subject to review. *E.g., City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000); *Mills v. Green*, 159 U.S. 651, 653 (1895).

B. The District Court Properly Abstained.

In any event, the District Court properly abstained. Federal abstention under the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971) is appropriate in accordance with principles of comity and federalism where necessary to avoid interference by federal courts in state judicial proceedings. *Id.* at 43-49. *See also Middlesex Ethics Comm.*, 457 U.S. at 432; *Juidice v. Vail*, 430 U.S. 327, 335 (1977). Under the *Younger* abstention doctrine, federal courts should abstain where the state proceedings: (1) are judicial in nature; (2) vindicate important state interests; and (3) provide litigants an adequate opportunity to raise federal constitutional challenges. *Younger*, 401 U.S. at 44-46; *Brooks v. New Hampshire Supreme Court*, 80 F.3d 633, 638 (1st Cir. 1996). The District Court correctly abstained here. First, the state guardianship proceedings and judgment unquestionably are judicial in nature. And those proceedings were "ongoing" at all relevant times for *Younger* purposes, because the dispositive date as to "ongoing" status is either the date on which the federal complaint was filed, or on which "proceedings of substance" took place in the federal court. *Hicks v. Miranda*, 422 U.S. 332, 349 (1975); *Bettencourt*, 904 F.2d at 777.

The probate petition was pending when this federal action began, and at the time of proceedings of substance.

Second, the Massachusetts proceedings implicated and advanced important state interests. Massachusetts has a comprehensive statutory scheme for addressing probate and guardianship-related issues (*see* G.L. c. 201 § 1 et seq.), and a strong interest in applying its own probate law without interference from the federal courts. *See Hemon v. Office of Public Guardian*, 878 F.2d 13, 15 (1st Cir. 1989). By contrast, federal courts have limited authority to adjudicate probate matters. *Marshall v. Marshall*, 126 S. Ct. 1735, 1744-1750 (2006).

Third, the Massachusetts courts had the power to assess any constitutional issues raised by the Petitioners. *E.g.*, *Blixt v. Blixt*, 385 Mass. 555 (2002) (Probate Court has authority to decide constitutional questions); *In the Matter of Moe*, 385 Mass. 555, 561 (1982) (Probate Court is a court of "superior and general jurisdiction possessing inherent powers. . . ."). And the Petitioners had the opportunity to make their arguments in the Probate Court and to press them on appeal, and did so. *See Pollard*, 54 Mass. App. Ct. 318. The fact that the state courts ruled against the Petitioners is immaterial, and no reason not to abstain. *Bettencourt*, 904 F.2d at 779.

The Petitioners tacitly concede these points. They attempt to argue instead that this case involves bad faith, harassment, or . . . other unusual circumstances within the meaning of *Younger*. *See* 401 U.S. at 54. This exception to abstention has been construed "very narrowly" by this Court, and is applicable only in "unusual circumstances." *Kugler v. Helfant*, 421 U.S. 117, 126 n.6 (1975); *Perez v. Ledesma*, 401 U.S. 82, 83-85 (1971); C. Wright, A. Miller &

E. Cooper, *Federal Practice and Procedure* § 4255 (1978). No such circumstances are present here. There is no well-pled allegation of bad faith, harassment, or other unusual circumstances. There is no allegation or evidence that the Probate Court judge or the justices of the Massachusetts Appeals Court had any pecuniary interest in the guardianship petition. *Contrast Gibson v. Berryhill*, 411 U.S. 564 (1972). There is nothing here other than state court litigants who are unhappy with largely factual decisions of state courts and seek to challenge them collaterally in federal court.

Further, the Massachusetts Probate and Appeals Courts are presumed to be tribunals "of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances." *Withrow v. Larkin*, 421 U.S. 35, 55 (1974) (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941)). The Petitioners have not come close to overcoming this presumption. Finally, the federal oversight that the Petitioners seek would fly in the face of the principles of comity that underlie *Younger*. Comity has no practical value if litigants who disagree with interlocutory findings of fact, orders, and judgments in state proceedings can interrupt and nullify those proceedings simply by citing section 1983 and demanding supervision from a federal court.

C. Pursuant to the *Rooker-Feldman* Doctrine, the District Court Lacked Subject Matter Jurisdiction.

Even as explicated by *Exxon*, the *Rooker-Feldman* doctrine still precludes precisely the kind of federal regulation of state court proceedings and orders that the Petitioners seek here. *Rooker-Feldman* holds that federal

courts lack subject matter jurisdiction over claims that seek review of state court judgments. *See generally Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-416 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-486 (1983). According to the *Exxon* Court:

> The *Rooker-Feldman* doctrine . . . is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon, 544 U.S. at 284. "Under the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction over federal complaints . . . [that] essentially invite federal courts of first instance to review and reverse unfavorable state-court judgments." *State Resources Corp. v. The Architectural Team, Inc.*, 433 F.3d 73, 79 (1st Cir. 2005) (quoting *Federacion de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 20 (1st Cir. 2005)).

Pursuant to these authorities, the lower Courts properly denied the 60(b) motion. This case fits the paradigm *Rooker-Feldman* pattern as described in *Exxon*: The federal action and 60(b) motion were brought by state court losers complaining of alleged harm caused by *prior* state court proceedings, orders, and a judgment; and the state court losers seek federal review and rejection of these prior orders and judgment. As the federal suit seeks nothing less than review and revamping of final decisions of the Probate Court and the Massachusetts Appeals

Court, *Rooker-Feldman* still applies, and there is no federal jurisdiction.

The fact that the Petitioners filed their first complaint just before the Probate Court proceedings had fully concluded does not alter this conclusion, as this chronology illustrates:

- The federal amended complaint was filed three weeks *after* the Probate Court trial. It extensively criticizes the Probate Court's conduct of the prior trial and the Court's trial rulings, and seeks relief on the basis of the Probate Court's alleged errors.
- The Probate Court issued its decision dismissing the guardianship petition on June 25, 1999, effectively concluding the Probate Court's review of the Petitioners' complaints – constitutional and otherwise.
- *Thereafter*, in September 1999, the Petitioners purported to file their "Supplemental Complaint," which specifically criticized the Probate Court's June judgment, and sought a declaration that the June judgment was actionable under 42 U.S.C. § 1983 due to the "apparent criminal conduct, fraud, deception and/or mistake through/upon [sic] the conduct of some or all of the . . . Defendants." (Supp. Comp. ¶ 37).[5]
- After the Probate Court's decision and the filing of the Supplemental Complaint, the District Court issued its memorandum and order of dismissal in December 1999.

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[5] The District Court relied on and cited the Supplemental Complaint in its Memorandum and Order of dismissal. (App. 2a)

- In 2002, the Massachusetts Appeals Court affirmed the judgment of the Probate Court and the Supreme Judicial Court denied review. *Pollard*, 54 Mass. App. Ct. 318.
- In 2005, the Petitioners moved pursuant to Rule 60(b), openly seeking *current* federal review and nullification of the long-final Probate Court judgment.

Given this history, *Rooker-Feldman* applies in either of two ways.

First, this case fits the scenario anticipated in *Federacion de Maestros*, in which federal review is sought while the state proceedings are ongoing, but have ended as to the disputed federal issue. *See* 410 F.3d at 27 n.14. That is this case. The Petitioners were unhappy with rulings by the Probate Court, and by the Probate Court's dismissal of their guardianship petition. They filed the federal suit purporting to allege due process-type violations in three pleadings that attacked virtually all aspects of the probate proceedings, including the trial and judgment. The Probate Court proceedings the Petitioners were aggrieved by *ended* with that Court's June 25, 1999 decision, which then was *followed* by the filing of the supplemental complaint, the District Court's consideration of the motions to dismiss, and the District Court's dismissal of the federal suit. As the Probate Court proceedings that were the subject of the Petitioners' complaints had, "for all practical purposes, ended as to the federal issue" *before* federal review occurred (*Federacion de Maestros*, 410 F.3d at 27 n.14), *Rooker-Feldman* still fits.

Second, in any event, the Petitioners' 60(b) motion seeks *in 2006* a federal review of state proceedings that

have been *fully* complete and final since all state appellate review ended *in 2002*. Regardless how the chronology of the state and federal matters in 1999 and 2000 may be parsed, the Petitioners are *now* seeking to nullify a state judgment that was affirmed in 2002 simply because they disagree with the decision and dislike its effect on them. *Rooker-Feldman* would not permit this if the Petitioners were commencing their federal suit now. *See Johnson v. DeGrandy*, 512 U.S. 997, 1005-1006 (1994); *Howlett v. Rose*, 496 U.S. 356, 369-370 n.16 (1990); E. Chemerinsky, *Federal Jurisdiction*, 423 (2d ed. 1994). They should not be permitted to make an end run around this restriction because, through a fortuity of timing, they are acting through a 60(b) motion rather than a new complaint.[6]

D. The Doctrine Of Judicial And Quasi-Judicial Immunity Also Bars The Petitioners' Claims.

Even if there were no reason to abstain and good subject matter jurisdiction, the Petitioners' claims were properly dismissed based on the doctrine of absolute judicial and quasi-judicial immunity. Judges are absolutely immune from civil liability for any judicial act. *See Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985); *Forrester v. White*, 484 U.S. 219, 225 (1988); *Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1871). Beyond judges, absolute immunity has been extended to a variety of persons performing quasi-judicial functions, including clerks, registers, and

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[6] Nor can the Petitioners trump the issue by alleging diversity jurisdiction. There can be no diversity jurisdiction here, as state actors in their official capacities are not "citizens" of any state. *See Worcester County Trust Co. v. Riley*, 302 U.S. 292, 299-300 (1937).

court-appointees. *See, e.g., Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993); *Briscoe v. LaHue*, 460 U.S. 325, 335-336 (1983); *Butz v. Economou*, 438 U.S. 478, 513 (1978); *Imbler v. Pachtman*, 424 U.S. 409, 424-427 (1976).

These principles required dismissal of all claims against Perlman (court-appointed guardian *ad litem* and, later, judge), Shirazi (court-appointed physician), Sacks and Dunphy (judges), Carroll (assistant register of probate), and all other Respondents to the extent they were appointed by or assisting the Court, or otherwise acted in judicial capacities. All such actors are immune.

CONCLUSION

For all of the foregoing reasons, the Respondents request that the Petition for Certiorari be denied.

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